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असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

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नई दिल्ली, शुक्रवार, जनवरी 5, 1996/पौष 15, 1917

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NEW DELHI, FRIDAY, JANUARY 5, 1996/PAUSA 15, 1917

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)

The following President's Act is published for general information:—

THE UTTAR PRADESH HEALTH WORKERS AND HEALTH SUPERVISORS (REGULATION OF PAY) ACT, 1996

No. 2 OF 1996

Enacted by the President in the Forty-sixth Year of the Republic of India.

An Act to regulate the Pay of Health Workers and Health Supervisors under the multi-purpose Workers Scheme of the Medical, Health and Family Welfare Department and for matters connected therewith or incidental thereto.

In exercise of the powers conferred by section 3 of the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1995, the President is pleased to enact as follows:—

1. (1) This Act may be called the Uttar Pradesh Health Workers and Health Supervisors (Regulation of Pay) Act, 1996.

Short title and
commence-
ment.

(2) Sections 2 and 3 shall be deemed to have come into force on July 23, 1981, sections 4, 5, 6 and 7 shall be deemed to have come into force on May 1, 1995 and the remaining provisions shall come into force at once.

Definitions.**2. In this Act—**

(a) "Health Worker (male)" means and be deemed always to have meant a person appointed as such on or after July 23, 1981 and includes a person working as Basic Health Worker, House Visitor, Vaccinator and Trachoma Health Assistant on the said date;

(b) "Health Worker (female)" means and be deemed always to have meant a person appointed as such on or after July 23, 1981 and includes a person working as Auxillary Nurse Midwife, and Family Welfare Worker on the said date;

(c) "Health Supervisor (male)" means and be deemed always to have meant a person appointed as such on or after July 23, 1981 and includes a person working as Family Planning Health Assistant, Health Inspector, Small-Pox Supervisor and Surveillance Inspector on the said date;

(d) "Health Supervisor (female)" means and be deemed always to have meant a person appointed as such on or after July 23, 1981 and includes a person working as Lady Health Visitor on the said date;

(e) "Multipurpose Workers Scheme" means an integrated scheme of all Health and Family Welfare Programmes of the Medical, Health and Family Welfare Department of the State Government.

Pay of Health Workers and Health Supervisors.

3. (1) The scales of pay admissible to Health Worker (male), Health Worker (female), Health Supervisor (male) and Health Supervisor (female), under the Multipurpose Workers Scheme shall be as follows:—

(i) With effect from July 23, 1981—

| | |
|--------------------------------|---------------------------|
| (a) Health Worker (male) | Rs. 400-10-450-12-474-EB- |
| and Health Worker (female) | 12-570-EB-15-615 |
| (b) Health Supervisor (male) | Rs. 470-15-575-EB- |
| and Health Supervisor (female) | 15-650-17-701-EB-17-735 |

(ii) With effect from January, 1, 1986—

| | |
|--------------------------------|----------------------------|
| (a) Health Worker (male) | Rs. 975-25-1150-EB-30-1660 |
| and Health Worker (female) | |
| (b) Health Supervisor (male) | Rs. 1350-30-1440-40-1800- |
| and Health Supervisor (female) | EB-50-2200 |

(2) The State Government may from time to time, by notification, revise or modify the scales of pay specified in sub-section (1).

Rescission of orders.

4. The following orders issued by the State Government shall stand rescinded from the respective dates of their issue, namely:—

(a) No. 2752/V-12-91-1 Writ (11)/88, dated April 26, 1991;

(b) No. 5388/V/12-91-1 Writ (11)/88, dated October 1, 1991;

(c) No. 913/V-12-1994-1 Writ (11)/88, dated March 25, 1994.

Over-riding effect.

5. The provisions of this Act shall have effect notwithstanding anything contained in any judgement, decree or order of any court or in the orders of the State Government and the scales of pay specified in section 3 shall be deemed to be and always to have been admissible to Health Worker (male), Health Worker (female), Health Supervisor (male) and Health Supervisor (female) as if the provisions of this Act were in force at all material times.

Recovery of excess amount and payment of arrears of pay

6. (1) Any amount paid to a person in excess of the amount to which he is entitled in accordance with the scales of pay specified in section 3 shall be recoverable from him.

(2) The State Government shall take prompt steps for payment of arrears of pay and allowances as may be payable in accordance with the scales of pay specified in section 3.

7. (1) If any difficulty arises in giving effect to the provisions of this Act by reason of anything contained in this Act, the State Government may, by a notified order, direct that this Act shall have effect subject to such adaptations whether by way of modification, addition or omission as it may deem necessary or expedient for removing the difficulty.

Power to
remove
difficulties.

(2) An order under sub-section (1) may be made with retrospective effect from a date not earlier than July 23, 1981 but such order shall not be made after the expiration of the period of two years from May 1, 1995.

(3) Every order made under sub-section (1) shall be laid, as soon as may be, before both the Houses of the State Legislature and the provisions of sub-section (1) of section 23-A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.

U P Ordinance
No 35 of 1995

8. (1) The Uttar Pradesh Health Workers and Health Supervisors (Regulation of Pay) (Second) Ordinance, 1995 is hereby repealed.

Repeal and
saving

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1), shall be deemed to have been done or taken under this Act as if the provisions of this Ordinance were in force at all material times.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Government of India.

Reasons for the enactment

WHEREAS in the Year 1965 the Health Department of the State Government had a programme by the name of National Malaria Eradication Programme, in which apart from other employees, there were two categories of field staff called Surveillance Inspector and Malaria Inspector in the Scale of Pay of Rs. 120-220, another category of workers was called House Visitor and their scale of pay was Rs. 80-140, the work of the House Visitor was supervised by the Surveillance Inspector and Malaria Inspector. The part of National Malaria Eradication Programme which was known as Consolidation Phase entered into Maintenance Phase with effect from September 1, 1965. On commencement of the Maintenance Phase, some staff amongst the Surveillance Inspectors and Malaria Inspectors were found surplus and were to be retrenched. The State Government *vide* order dated July 22, 1965 took a decision to implement the Integrated Malaria and Family Planning Programme. Under this Programme the designation of the House Visitor was changed as Basic Health Worker while the remaining House Visitors under Consolidation Phase continued as such (House Visitors). The Surveillance Inspectors and Malaria Inspectors were retrenched and were reappointed afresh on the newly created posts of Family Planning Health Assistant according to their qualifications;

AND WHEREAS in the Health Department of the State Government there was another programme which was called Family Planning. There was a category of employees in this programme which was called Social Worker. Its minimum qualification used to be graduation in Social Sciences and the scale of pay was Rs. 120-220;

AND WHEREAS the Malaria Eradication and the Family Planning Programmes were integrated by State Government Order dated July 22, 1965 and the retrenched employees such as Surveillance Inspectors, Malaria Inspectors were reappointed on newly created posts of Family Planning Health Assistants and some of the posts of Social Workers were redesignated as Family Planning Health Assistants under the integrated programme;

AND WHEREAS the designation of the Social Workers working in 420 Blocks was changed as Family Planning Health Assistants and their scale of pay was also modified and was fixed at Rs. 160-320;

AND WHEREAS new posts of Family Planning Health Assistant in the lower scale of pay of Rs. 120-220 were created by the State Government *vide* order dated October 17, 1966 and extra hands of the Malaria Eradication Programme were appointed afresh on these newly created posts who possessed highest educational qualification of Intermediate. These appointees were also called Family Planning Health Assistants;

AND WHEREAS in the said process two categories of posts of Family Planning Health Assistant came into existence in each of the 420 Blocks. In all there were 840 posts;

AND WHEREAS in this manner, there came into existence the following three relevant categories of employees in the Integrated Malaria and Family Planning Programme which was started with effect from September 1, 1965 alongwith some other categories of employees:—

(i) Basic Health Worker in the scale of pay of Rs. 80-140;

(ii) Erstwhile worker of Malaria Eradication Programme, Surveillance Inspector and Malaria Inspector who had been freshly appointed on the newly created posts of Family Planning Health Assistant in the scale of pay of Rs. 120-220;

(iii) Erstwhile Social Workers who continued to remain on the post and who were redesignated as Family Planning Health Assistants in the scale of pay of Rs. 160-320;

AND WHEREAS after the aforesaid changes the work of Basic Health Workers was being supervised by the aforesaid both categories of Family Planning Health Assistants, the erstwhile retrenched employees of National Malaria Eradication Programme appointed on the newly created posts of Family Planning Health Assistants in the scale of pay of Rs. 120-220 as well as erstwhile Social Workers in the scale of pay of Rs. 160-320;

AND WHEREAS as a result of revision of scales of pay with effect from August 1, 1972 the scale of pay of holders of the post of Family Planning Health Assistants in the lower scale of pay of Rs. 120-220 was fixed at Rs. 230-380, later on revised to 230-385 with effect from October 1, 1975 and the scale of pay of holders of the post of Family Planning Health Assistants in the higher scale of pay of Rs. 160-320 was fixed at Rs. 300-500. The scale of pay of Basic Health Workers was also revised and fixed at Rs. 185-265;

AND WHEREAS there came into being two categories of Family Planning Health Assistant doing the same work of supervision but getting two different scales of pay. One getting the scale of pay of Rs. 230-385 and the other getting the scale of pay of Rs. 300-500;

AND WHEREAS out of the seven categories under integrated programme, in workers category, only the category of Basic Health Workers was being supervised by the aforesaid Family Planning Health Assistant. The six other categories including the post of supervisory nature namely Family Planning Health Assistant of lower grade continued to remain as such till Multi-purpose Workers Scheme was launched in the Year 1981 vide order dated July 23, 1981 of the State Government;

AND WHEREAS with effect from July 1, 1979 the scale of pay were again revised as given below:—

(i) Basic Health worker/House Visitor/Auxillary Nurse Midwife from Rs. 185-265 to Rs. 354-550;

(ii) Family Planning Health Assistant lower grade from Rs. 230-385 to Rs. 354-550. The Holders of this post were given the personal scale of pay of Rs. 400-615;

(iii) Family Planning Health Assistant higher grade from Rs. 300-500 to Rs. 470-735;

AND WHEREAS in the year 1981 Multipurpose Workers Scheme sponsored by the Central Government was launched whereunder Basic Health Workers as well as the remaining other categories of workers and the Family Planning Health Assistant of the lower grade were integrated and were named as Health Workers. This integrated Group remained different and separate from the other categories of Family Planning Health Assistant who were getting higher scale of pay. The result was that in the former category namely health workers there were members of two erstwhile categories namely Basic Health Workers and Family Planning Health Assistant of lower grade and five other categories getting two different scales of pay namely Rs. 354-550 and Rs. 400-615. In the other category there were Family Planning Health Assistants of higher grade and certain other categories in the scale of pay of Rs. 470-735. It was in the context of the above situation that Writ Petition No. 15904 of 1983, Shiv Vharan Lal Kushwaha and others versus State of Uttar Pradesh was filed by the category of Basic Health Workers and other similar two categories namely House Visitors and Auxillary Nurse Midwives who were getting the scale of Pay of Rs. 354-550. In the said Writ Petition they contended that they have been integrated with Family Planning Health Assistants, meaning thereby Family Planning Health Assistants of lower grade who were getting scale of pay of Rs. 400-615 as personal scale of pay in the Health Worker capacity, therefore, they should get the same scale of pay. The petitioners of said Writ Petition did not initially claim any parity with the Family Planning Health Assistant of higher grade who were getting the scale of pay of Rs. 470-735 and were working in supervisory category;

AND WHEREAS under the Multipurpose Workers Scheme and integration thereunder the Family Planning Health Assistants of higher grade were supervising the work of integrated group of Basic Health Workers and others as well as Family Planning Health Assistants of the lower grade, there came into being only two categories namely:—

(1) Supervisory category of Health Supervisors consisting of Family Planning Health Assistants and others in the scale of pay of Rs. 470-735; and

(2) the integrated group of Health Workers in the scale of pay of Rs. 354-550 whose work was being supervised by the aforesaid supervisory category;

AND WHEREAS under the Multipurpose Workers Scheme, in which the aforesaid integration was done, the following four categories were formed—

(1) Health Worker (male) which consisted of erstwhile (i) Basic Health Workers, (ii) House Visitors, (iii) Vaccinators, (iv) Trachoma Health Assistants, (v) Family Planning Health Assistants of the lower grade;

(2) Health Worker (female) which consisted of erstwhile (i) Auxillary Nurse Midwives, (ii) Family Welfare Workers;

(3) Health Supervisor (male) which consisted of erstwhile—

(i) Family Planning Health Assistants of higher grade;

(ii) Health Inspectors, Small-Pox Supervisors, Surveillance Inspectors;

(4) Health Supervisor (female) which consisted of Lady Health Visitor.

AND WHEREAS the aforesaid Writ Petition No. 15904 of 1983 was filed by only three constituents of the aforesaid integrated group nos. (1) and (2) of Health Workers (male and female) on the ground that one of the constituents of their category namely, Family Planning Health Assistants of lower grade was getting scale of pay of Rs. 400-615 while the remaining were getting scale of pay of Rs. 354-550 which was discriminatory. In the above petition there was no initial claim for parity which the Health Supervisors (male and female) namely aforesaid group nos. (3) and (4);

AND WHEREAS during the pendency of the aforesaid Writ Petition No. 15904 of 1983 another Writ Petition No. 4281 of 1984 was filed by some members of one of the constituents of the Health Workers (male) who were erstwhile Family Planning Health Assistants of the lower grade;

AND WHEREAS Petitioners of Writ Petition No. 4281 of 1984 urged that they were equal to one of the constituents of Health Supervisor, namely erstwhile Family Planning Health Assistants of the higher grade and another constituent of Health Supervisor namely Small-Pox Supervisors, Surveillance Inspectors and Health Inspectors and claimed parity of pay with the Health Supervisor who were at that time getting revised scale of pay of Rs. 470-735;

AND WHEREAS on April 2, 1985 the Hon'ble High Court allowed the aforesaid Writ Petition No. 4281 of 1984 and issued against the State Government a mandamus to the following effect:

(i) The petitioners be given the status of Health Supervisors;

(ii) The petitioners be given the scale of pay of Rs. 470-735;

AND WHEREAS out of the seven constituents of Health Workers only one of the Constituents namely Family Planning Health Assistants of lower grade had filed the aforesaid Writ Petition to claim parity with the Family Planning Health Assistants of higher grade who were one of the five constituents of the category of Health Supervisors.

AND WHEREAS the judgement in the aforesaid Writ Petition No. 4281 of 1984 has become final;

AND WHEREAS the result of the above Writ Petition was that one of the constituents of the Health Workers namely Family Planning Health Assistants of lower grade was upgraded to the level of Family Planning Health Assistants of higher grade and was put in the category of Health Supervisors with effect from July 23, 1981 and was also given the scale of pay of Rs. 470-735;

AND WHEREAS from the category of Health Workers, which consisted of seven erstwhile categories including that of Family Planning Health Assistants of lower grade, only category of Family Planning Health Assistant of lower grade was taken out and put in the category of Health Supervisor. The remaining categories remained in the category of Health Workers;

AND WHEREAS at the time of the decision of Writ Petition No. 4281 of 1984, the Writ Petition No. 15904 of 1983 was pending and as already stated above, Writ Petition No. 15904 of 1983 was filed only by three constituents (other than the erstwhile Family Planning Health Assistants of lower grade and some others) of the categories of Health Workers to claim parity with the Family Planning Health Assistants of the lower grade. In other words the holders of scale of pay of Rs. 354-550 wanted their salary to be fixed in the scale of pay of Rs. 400-615;

AND WHEREAS after the decision of Writ Petition No. 4281 of 1984 the petitioners of Writ Petition No. 15904 of 1983 filed an application for amendment of the relief to the effect that they be given the scale of pay of Rs. 470-735 to which Family Planning Health Assistants of the lower grade became entitled by virtue of the judgment dated April 2, 1985 in Writ Petition No. 4281 of 1984. By the said amendment, they also claimed the relief of being designated as Health Supervisor;

AND WHEREAS the aforesaid amendment application was filed only by one category namely Basic Health Worker out of the three categories of the petitioners which had filed the Writ petition;

AND WHEREAS Writ Petition No. 15904 of 1983 no counter-affidavit was filed either to contradict or to explain anything, and the Writ Petition No. 15904 of 1983 was allowed on March 11, 1988;

AND WHEREAS the operative portion of the judgment in Writ Petition No. 15904 of 1983 is as under:

"In the result this petition succeeds and is allowed. A direction is issued to opposite parties to pay the same salary to petitioners as is being paid to Family Planning Health Assistants. There shall be no order as to costs.";

AND WHEREAS a review petition was filed in Writ Petition No. 15904 of 1983 by the erstwhile Family Planning Health Assistants of higher grade (now constituting Health Supervisor-complaining that the petitioners of Writ Petition No. 15904 of 1983 would now claim equal status with them and this would prejudice their placement category as well as status in their service which was dismissed with the observation that the High Court had only granted them parity of pay and not the status.

AND WHEREAS on the basis of the above mentioned order dated March 11, 1988 in Writ Petition No. 15904 of 1983, the petitioners of that petition filed a contempt application in the Hon'ble High Court being contempt Petition No. 631 of 1988 wherein they claimed payment of salary according to scale of pay of Rs. 470-735;

AND WHEREAS applicants of the aforesaid contempt application have tried to get not only the mandamus issued in Writ Petition No. 15904 of 1983 executed but also wanted the scale of pay of Rs. 1350-2200 to which the erstwhile Family Planning Health Assistants of lower grade had become entitled by virtue of the judgement and order dated April 2, 1985 in Writ Petition No. 4281 of 1984;

AND WHEREAS in compliance of the judgement dated March 11, 1988 in Writ Petition No. 15904 of 1983 the State Government *vide* order No. 2752/v-12-91/1 Writ (11)-88, dated April 26, 1991 granted the scale of pay of Rs. 400-615 but by mistake this scale of pay was made admissible with effect from July 1, 1979 instead of July 23, 1981;

AND WHEREAS the State Government in continuation of the said order dated April 26, 1991 issued order No. 5388/V-12-91-1-Writ(11)-88, dated October 1, 1991 granting the scale of pay of Rs. 975-1660 to Basic Health Worker and House Visitor and the scale of pay of Rs. 975-1540 to Auxillary Nurse Midwife with effect from January 1, 1986;

AND WHEREAS under the mistaken impression and under the fear of contempt of court the State Government thought that the scale of pay of Rs. 470-735, which was to be given only to the Family Planning Health Assistants of lower grade in compliance of the judgment and order, dated April 2, 1985 of Writ Petition No. 4281 of 1984 would also be payable to the petitioners of Writ Petition No. 15904 of 1983. Having so misunderstood the scope of Writ of mandamus in Writ Petition No. 15904 of 1983, issued by the Hon'ble High Court the State Government issued order no. 913/5-12-1994-1-Writ(11)-88, dated March 25, 1994 whereby scale of pay of Rs. 470-735 was ordered to be granted to the category of the petitioners of Writ Petition No. 15904 of 1983 with effect from July 23, 1981;

AND WHEREAS it was not realised at that time that the situations and the consequences of the said mistaken State Government order would be that the petitioners and other persons of the same category would claim the scale of pay of Rs. 1350-2200 with effect from January 1, 1986;

AND WHEREAS the petitioner of Writ Petition No. 15904 of 1983 had never been doing the work of Family Planning Health Assistants of higher grade namely supervisory work;

AND WHEREAS on July 23, 1981 the Multipurpose Workers Scheme had been introduced. On the implementation of this scheme the earlier designation of Family Planning Health Assistants had ceased to exist. Some of them had become constituents of the category of Health Workers. The other had become the constituents of category of Health Supervisors. In the context of equation, which was pleaded for equal pay, the intention could only be for getting same salary which the category of Health Workers was getting. The use of the expression Family Planning Health Assistants in the High Court order, meant, or could mean, only that category which was a part of the category of Health Workers. Otherwise, from the very beginning the relief would have been in respect of the category of Family Planning Health Assistants of higher grade which formed part of the category of Health Supervisors. Therefore, in this context expression 'Family Planning Health Assistant' can mean only those who were given scale of pay of Rs. 400-615;

AND WHEREAS out of the various erstwhile categories, which constituted Health Workers under the Multipurpose Workers Scheme, the category of erstwhile Family Planning Health Assistants, has been removed and integrated with the Health Supervisor but the remaining categories remained where they were;

AND WHEREAS to implement mandamus issued by the Hon'ble High Court in the Judgment, dated March 11, 1988 in Writ Petition No. 15904 of 1983 and to rationalize the scale of pay it is necessary and expedient to rescind the order Nos. 2752/V-12-91-1-Writ(11)-88, dated April 26, 1991 No. 5388/V-12-91-1-Writ(11)-88, dated October 1, 1991 and No. 913/V-12-1994-1-Writ(11)-88, dated March 25, 1994.

In view of the above, the Utter Pradesh Health Workers and Health Supervisors (Regulation of Pay) Ordinance, 1995 (U.P. Ordinance No. 23 of 1995) was promulgated by the Governor on May 1, 1995 to implement the writ of mandamus issued by the High Court in Writ Petition No. 15904 of 1983 and to rationalise the scales of pay and to rescind Government Orders No. 2752/V-12-91-1-Writ (11)-88, dated April 26, 1991 No. 5388/V-12-91-1 Writ (11)88, dated October 1, 1991 and No. 913/V-12-1994-1-Writ(11)-88, dated March 25, 1994 and to recover the excess amount paid in view of the said orders and to take

action for immediate payment of pay and allowances which have become payable. In order to replace the provisions of the said Ordinance the Uttar Pradesh Health Workers and Health Supervisor (Regulation of Pay) Bill, 1995 was introduced in the Uttar Pradesh Legislative Assembly on August 17, 1995 which was passed by that House on August 21, 1995 but the Bill could not be passed by the Uttar Pradesh Legislative Council. Since the provisions of the said Ordinance would not have remained operative after August 25, 1995. The Uttar Pradesh Health Workers and Health Supervisors (Regulation of Pay) (Second) Ordinance, 1995 (U.P. Ordinance No. 35 of 1995) was promulgated by the Governor on August 25, 1995.

The President issued a proclamation on the 18th October, 1995 under article 356 of the Constitution, in relation to the State of Uttar Pradesh, declaring, *inter alia*, that the powers of Legislature of the State shall be exercised by or under the authority of Parliament. Parliament has, under article 357(1)(a) of the Constitution, now conferred on the President, the powers of the Legislature of the State of Uttar Pradesh to make laws *vide* the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1995 (2 of 1996).

Since the said Ordinance could not be replaced by a Bill and the Ordinance is expiring on 7th January, 1996. It was decided that the said Ordinance shall be replaced by a President's Act.

Under the proviso to sub section (2) of section 3 of the Uttar Pradesh State Legislature (Delegation of Powers) Act, 1995 (2 of 1996) the President shall, before enacting any President's Act, consult a Committee constituted for the purpose consisting of the members of both the Houses of Parliament. As the said Committee has yet not been constituted and the matter is very urgent, it is proposed to enact the measure without reference to the said Committee.

J. C. PANT,
Secy. to the Government of India.

